FILE COPY

FILED
JUN 20 1947
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 144

JOHN SEIFING

Petitioner,

vs.

BARCLAY WHITE COMPANY, A CORPORATION, UNEMPLOYMENT COMPENSATION BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, COMMONWEALTH OF PENNSYLVANIA, AND GENERAL BUILDING CONTRACTORS ASSOCIATION,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

FRANK B. MURDOCH,
Attorney for Petitioner,
2635 Fidelity-Philadelphia Trust Building,
Philadelphia, Penna.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
I. Summary statement of the matter involved	2
(a) Opinions below	2
(b) Jurisdiction	2
(c) The question presented	2
(d) The statutes involved	2
(e) Statement of facts	4
II. Reasons relied on for allowance of writ	8
Brief in support of petition	13
I. Outline of argument	13
II. Argument	13
III. Conclusion	16

Citations

Cases:

Bigger v. *Unemployment Comp. Comm.*, 46 Atl. (2d) 137 (Del. Super. 1946)	6
Morrison v. *California*, 291 U. S. 82 (1934)	16
Speer v. *Industrial Commission* (Fla. Super Ct.) (1945), C. C. H. Unem. Ins. Serv. (Fla.), Par. 13,521	
Steward Machine Co. v. *Davis*, 301 U. S. 548 (1937)	13
Unemployment Comp. Comm. v. *Aragon*, 329 U. S. 143, 91 L. Ed. 143 (1946)	7, 8, 15

Statutes:

Judicial Code, Sec. 237(b) as amended by Act of February 13, 1925	2
Social Security Act of 1935, Tit. IX, 903(A)(5), (B) and (C), 49 Stat. 640; Internal Revenue Code, 26 USCA, Sec. 1603(a)(5) (B) and (C)	2, 3, 7
26 Alabama Code Ann. Sec. 214 E(2)(b) and(c)	12
56 Arizona Code Ann. Sec. 1005(c)(2) and (3)	12
Arkansas Stat. (1937), Sec. 8553(c)	13

Page

California Laws (1935), c. 352, Sec. 13(b)(2) and (3) as amended 13
167 A Colorado Stat. Ann. Sec. 5(c)(2)(b) and (c) .. 13
Connecticut Gen. Stat. (1939 Supp.), Sec. 1339e(b)(1)(B) and (C) 13
Delaware Laws (1947), (S. 78) Sec. 5(c)(1)(A) and (D) 13
Florida Stat. Ann. Sec. 443.06 (2)(b) 2 and 3 13
Georgia Code Ann., c. 54—610(c)(2)(B) and (C) ... 13
Idaho Code Ann. Sec. 43—2409(d)(2) and (3) 13
Illinois Stat. Ann. c. 45.134(c)(2) 13
Indiana Laws (1947), Sec. 1502(b) 13
Iowa Code (1946), Sec. 96.5—3b(2) and (3) 13
Kansas Gen. Stat. Ann. c. 44—706(c) 13
Kentucky Rev. Stat. Ann. Sec. 341.100 (2)(b) and (c) 13
Louisiana Gen. Stat. Ann. Sec. 4434.4(c)(2)(b) and (c) 13
Maine Rev. Stat. (1944), c. 24, Sec. 5(c)(2)(b) and (c) 13
Maryland Code Ann.—Art. 95A, Sec. 5(d)(2)(b) and (c) 13
Massachusetts Ann. Laws, c. 151A, Sec. 25(c)(2) and (3) 13
Michigan Stat. Ann. Sec. 17.531(b) 13
Minnesota Stat. Ann. Sec. 268.09(5)(b)(2) and (3) .. 13
Mississippi Code (1942), Sec. 7379(d)(2) (B) and (C) as amended 13
Missouri Rev. Stat. Ann. Sec. 9431 I(c)(2) (B) and (C) 13
Montana Rev. Code Ann. Sec. 3033.8(c)(2)(b) and (c) 13
Nebraska Rev. Stat. Sec. 48—628(c)(2)(ii) (iii) ... 13
Nevada Comp. Laws Ann. (1931-1941 Supp.), Sec. 2825.05(c)(2)(b) and (c) 13
New Hampshire Revised Laws (1942), c. 218, Sec. 4(C) (2)(b) and (c) 14
43 New Jersey Stat. Ann., Sec. 21—5(c)(2)(b) and (c) 14

Page

New Mexico Stat. Ann. Sec. 57—805(c)(2)(b) and (c) 14
New York Stat. Ann. (McKinney), Labor Law, Sec. 593—2(a) and (d) 14
North Carolina Gen. Stat., Sec. 96—14(c)(2)(b) and (c) 14
North Dakota Revised Code (1943), c. 52.0636—2 and 3 14
Ohio Gen. Code Ann., 1345—6e(1) and (4) 14
40 Oklahoma Stat. Ann., Sec. 215(c)(2)(B) and (C) 14
Oregon Comp. Laws Ann., Sec. 126—705(c)2 (a)(B) and (C) 14

Pennsylvania:

Pa. Laws, 1943, No. 157, p. 337-338 3
Pa. Laws, 1943, No. 312, p. 727 3
43 Pa. Stat. Ann. (Purdon) (1946 Pocket Parts), Sec. 753(t) 4
43 Pa. Stat. Ann. (Purdon) (1946 Pocket Parts), Sec. 802(a) 3

Rhode Island General Laws (1938), c. 284, Sec. 7(8)(b) and (c) 14
South Carolina Code of Laws (1942), Sec. 7035—85(c)(2)(B) and (C) 14
South Dakota Code (1939), c. 17.0830 (3(b)(2) and (3) 14
Tennessee Laws (1947,) c. 29, Sec. 5 D(2) b and c 14
Texas Civ. Stat. Ann. Art. 5221b-3(c)(2)(b) and (c) 14
Utah Code Ann. (1943), Tit. 42-2a-5(c)(2)(B) and (C) 14
Vermont Laws (1937), Public Act No. 1, Special Session, December 1936, Sec. 5(c)(2) II and III 14
Virginia Code Ann. (1942), Sec. 1887 (97)(c)(2)(b) and (c) 14
Washington Sess. Laws (1945), c. 35, § 79, pp. 116-117 14

Page

West Virginia Code Ann. (1943), Sec. 2366(80)(2) and (3) 14
Wisconsin Code (1945), c. 108.04 (9)(b) and (c) 14
Wyoming Comp. Stat. Ann. (1945), Sec. 54—105 A II(b)(ii) and (iii) 14

Unemployment Board and Referee Decisions:

Alabama Appeals Tribunal, Decision 1248 9
Arkansas Board of Review Decision No. 240 9
California Appeals Board Benefit Decision No. 1001-3494 9
Colorado Referee Decision. DD-848-43 9
Georgia Appeal Tribunal Decision 9
Illinois Board of Review Decision No. 44-BRRD-499 9
Indiana No. 45-R-49 9
Kansas Appeal Tribunal, Appeal No. 804 ..... 9, 10
Kansas Appeals Referee's Decision No. 1258 10
Massachusetts Review Examiner Decision, No. 9204-RE 10
Michigan Referee Decision No. B 4-117 10
Mississippi Review Board Decision No. BR-33-43 10
Nebraska Appeal Tribunal Decision No. 117 10
New York Appeal Board Case No. 10,645-44 10
North Carolina Unem. Comp. Comm. Decision No. 478 10
Oklahoma Board of Review Decision No. 712 10
Tennessee Appeal Tribunal Decision No. 41-AT-351 11
Utah Appeals Referee Decision No. 44-A-236 10
Virginia Unem. Comp. Comm., Decision No. D-888, M. S.-249 11
Washington Appeals Examiner Decision No. 9853 10

Miscellaneous:

Rule 38, par. 5 of the Supreme Court 9
12 Federal Register 90, 91 (January 4, 1947) 7
3 Federal Register 11 (January 4, 1938) 7
3 Federal Register 48 (January 8, 1938) 7
Menard, Refusal of Suitable Work (1945), 55 Yale L. J. 134, 142, 144 9

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 144

JOHN SEIFING

Petitioner,

vs.

BARCLAY WHITE COMPANY, A CORPORATION, UNEMPLOYMENT COMPENSATION BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, COMMONWEALTH OF PENNSYLVANIA, AND GENERAL BUILDING CONTRACTORS ASSOCIATION,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, John Seifing, respectfully petitions this Honorable Court for a writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania

I. Summary Statement of the Matter Involved

(a) Opinions Below

The opinion of the Supreme Court of Pennsylvania and the dissenting opinion (R. 102-110) is reported at 356 Pa. 43, 50 Atl. (2d) 336 (1947).

(b) Jurisdiction

The judgment of the Supreme Court of Pennsylvania was entered on January 6, 1947 (R. 102). A petition for re-argument was thereupon filed by petitioner (R. 110-115), which was denied by the Supreme Court of Pennsylvania on March 24, 1947 (R. 69). The opinion of the Supreme Court is reported in 356 Pa. 43, 50 Atl. (2d) 336 (1947). The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended by the Act of February 13, 1925.

(c) The Question Presented

Does a State act in violation of Section 903 (a) (5) (B) and (C) of the Social Security Act of 1935, if the State, pursuant to a state statute passed in conformity with the Social Security Act, denies unemployment compensation to an otherwise eligible individual solely because the individual, a member of a labor union for more than 30 years, was offered and refused to accept a job he was capable of doing but had never done, the acceptance of which job, located in another city, paying below the union scale of wages, and operated under open-shop conditions, would have required his giving up his membership in his labor union?

(d) The Statutes Involved

Social Security Act of 1935, Tit. IX, Section 903(a)(5) (B) and (C), 49 Stat. 640; Internal Revenue Code, 26 USCA Sec. 1603 (a) (5) (B) and (C).

26 USCA Sec. 1603. "Approval of state laws

"(a) Requirements. The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: . . .

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;"

Pa. Laws, 1943 No. 157, p. 337-338.

"Sec. 402. Ineligibility for Compensation. An employe shall be ineligible for compensation or waiting period credit for any week——

(a) In which his unemployment is due to failure, without good cause, either to apply for suitable work at such time and in such manner as the department may prescribe or to accept suitable work when offered to him by the employment office or by his previous employer. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training and experience, and the distance of the available work from his residence."

This provision as amended in immaterial respects is found in 43 Pa. Stat. Ann. (Purdon, 1946 Pocket part) § 802 (a).

Pa. Laws, 1943, No. 312, pp. 718, 727.

"§ 4. Definitions. The following words and phrases, as

used in this act, shall have the following meanings unless the context clearly requires otherwise. . . .

"(r) 'Suitable Work' means all work which the employe is capable of performing, except work in which—(1) the position offered is vacant, due directly to a strike, lockout, or other labor dispute, or (2) the remuneration, hours or other conditions of the work offered are substantially less favorable to the employe than those prevailing for similar work in the locality, or (3) as a condition of being employed, the employe would be required to join a company union, or to resign from, or refrain from joining, any bona fide labor organization."

This provision as amended in immaterial respects is found in 43 Pa. Stat. Ann. (Purdon, 1946 Pocket part) § 753 (t).

(e) Statement of Facts

The Unemployment Compensation Board of Review, and the Superior and Supreme Courts found, and the record discloses, the following facts:

The Petitioner is a carpenter (R. 19, 22, 23, 29), who lives in the city of Philadelphia (R. 28). He is and has been for over 30 years a member of the United Brotherhood of Carpenters (R. 20) a labor union affiliated with the American Federation of Labor. As such member, petitioner is entitled to old age and death benefits (R. 21).

For five weeks ending January 21, 1944, petitioner was employed in Philadelphia by the respondent, Barclay White Company, as a carpenter (R. 19). He was paid a wage scale of $1.58 an hour established by his union (R. 20, 22). Thereupon he was laid off (R. 20). He then registered for work with the United States Employment Service and, subject to two waiting weeks, filed claims for unemployment compensation pursuant to the Unemployment Compensa-

tion Law of Pennsylvania for the week ending February 20, 1944, and for the three weeks following (R. 21).

On February 21, 1944, petitioner was referred by the Employment Service to the Sun Ship Company in the city of Chester, Pa., for employment as a ship's carpenter (R. 21, 25). Petitioner had never worked as a ship's carpenter (R. 23), nor had he ever worked in Chester (R. 28). The job offered petitioner paid from $1.01½ to $1.20 per hour. The Sun Ship Company operated an open-shop plant and men not members of the carpenters' union worked there. The carpenters' union had a closed shop in Philadelphia (R. 22, 23).

Under the rules of the carpenters' union if a member accepts a job at less than the union rate or if he works at a job where carpenters not members of the union are employed, he is subject to fine, suspension, or expulsion (R. 24, 60-62). If the petitioner had accepted the job offered him he would have been suspended or compelled to resign his membership in the union and would have lost his accumulated benefits (R. 24, 60-62).

Petitioner refused the position offered (R. 21). The Bureau of Unemployment Compensation thereupon denied him compensation for the three weeks beyond February 20, 1944 on the ground he had refused to accept suitable work as defined in the Pennsylvania Statute (R. 13-14). Petitioner thereupon appealed to the Unemployment Compensation Board of Review (R. 14).

A referee's hearing was held at which the facts already recited were adduced. The only evidence introduced at the hearing bearing on the relation of the wages, hours, or other conditions of the work offered to "those prevailing for similar work in the locality" was a statement of the Local Appeal Clerk and of a Junior Interviewer. The Appeal Clerk testified that "the distance was normal and

this was the prevailing rate for the type of work being offered" (R. 21); this statement, however, was made solely on the recommendation of the Junior Interviewer (R. 24). The Junior Interviewer testified:

"I also told him [petitioner] if he did not take the job, which we considered suitable work, especially this being in an emergency, and Chester isn't too far, it is only twenty minutes from 16th and Filbert, Pennsylvania Suburban Station, it would affect his compensation, and also that Chester could not supply enough workers for the shipyard and that they had to come to Philadelphia for a good many workers. As a matter of fact I don't think it takes any longer to go to Chester as to the Navy Yard" (R. 22).

He also stated that the work was "suitable work" in his opinion (R. 22) and that the job offered petitioner was "carpenter job, listed as ship carpenter, which, however, we considered suitable work for carpenters . . ." (R. 25). He admitted, however, that he did not know how many squares it was from the train at Chester to the Sun Ship (R. 28).

Thereupon the referee affirmed the decision of the bureau on the ground that petitioner refused a referral to suitable work without good cause (R. 31-36).

Petitioner then appealed to the Board of Review of the Unemployment Compensation Board (R. 38-39). The Board of Review reversed the referee, found for petitioner and ordered compensation for the three weeks in question (R. 46-48, 49-55). Respondent, Barclay White Company, thereupon appealed to the Superior Court of Pennsylvania (R. 1-8). That court, two judges dissenting, affirmed the decision of the Board of Review. The opinion of the Superior Court and the dissent appears in 159 Pa. Super. 94, 46 Atl. (2d) 598 (1946) and is set forth in the record (R. 139-154). Respondent, Barclay White Company, then appealed to the Supreme Court of Pennsylvania which, one judge dissent-

ing, reversed the decision of the Superior Court, holding that petitioner was not entitled to unemployment compensation for the three weeks in question. On March 24, 1947, the Supreme Court of Pennsylvania denied rehearing (R. 69).

The Pennsylvania Unemployment Compensation Act, concededly passed to conform to the standards of Section 903 of the Federal Social Security Act, 26 USC § 1603, has, ever since its passage been certified by the Social Security Board as required by Section 903 (c) of the Social Security Act, 26 USC § 1603 (c).

See, e.g., 3 Fed. Reg. 11 (Jan. 4, 1938), 48 (Jan. 8, 1938) (certification for taxable year 1937).

See, e.g., 12 Fed. Reg. 90-91 (Jan. 4, 1947) (certification for taxable year 1946).

Cf. *Unemployment Comp. Comm.* v. *Aragon*, 329 U. S. 143, 150, 91 L. Ed. 143, 147 (1946) ("The Social Security Act of 1935 requires that the state or territorial law contain a provision to this effect before the legislation can be approved by the Social Security Board").

The standards of Section 903 (a)(5)(B) and (C) of the Social Security Act are incorporated verbatim in the definition of "suitable work" in the Pennsylvania Act with the result that work which falls within the interdiction of Section 903 (a)(5)(B) and (C) is excluded from the definition "suitable work." The federal question here involved is thus composed of two parts: first, was petitioner offered "suitable work" within the meaning of the Pennsylvania statute and, second, was it understood that the interpretation of the phrase "suitable work" is governed at least as to minimum standards by Section 903 (a)(5)(B) and (C) of the Social Security Act.

The issue as to whether petitioner was offered "suitable

work" was raised throughout the proceedings; decided in the first instance by the Bureau of Unemployment Compensation in the affirmative (R. 13-14); raised by petitioner on appeal to the Board of Review (R. 14); decided adversely to petitioner by a Referee of the Board (R. 31-36); raised by petitioner on further appeal to the Board of Review (R. 38-39); found in his favor by the Board (R. 46-48, 49-55); and, though the record discloses no further action on the part of petitioners or respondents specifically raising the issue before the Superior and Supreme Courts of Pennsylvania, argued before and directly passed on by both the Superior (R. 90, 159 Pa. Super. 94, 96) and Supreme Courts (R. 104, 356 Pa. 43, 47). The issue as to whether petitioner was denied compensation for refusing to accept work offered which violated the standards of Section 903 (a)(5)(B) and (C) of the Social Security Act; i.e., was not suitable work for that reason, is not directly referred to in the record up to the time the proceedings reached the Supreme Court of Pennsylvania. Petitioner, in order to have the record adequately show that the controlling nature of the Social Security Act had been duly recognized and passed upon, requested (R. 131-133) and obtained from the Supreme Court of Pennsylvania a certificate showing that the federal question: namely, whether petitioner had been offered suitable work within the meaning of Section 903(a)(5)(B) and (C) of the Social Security Act, had been argued before and necessarily decided by that court (R. 143-145).

II. Reasons Relied On for Allowance of Writ

A federal question of substance presents itself with regard to the meaning of the standards set up in Sec. 903 (a) (5) (B) and (C) of the Social Security Act. Cf. *Unemployment Comp. Comm.* v. *Aragon*, 329 U. S. 143, 145,

91 L. Ed. 143, 145 (1946). This question is of fundamental importance in the interpretation of the Act involving as it does the meaning of such crucial words as "other conditions of work," "similar work," "locality," "condition of being employed," and "resign from . . . any bona fide labor organization." This question has not been heretofore determined by this Court. (Supreme Court Rule 38, par. 5(a)). It is a question which, insofar as clause (B) is concerned, good authority indicates has been wrongly decided.

See Menard, Refusal of Suitable Work (1945) 55 Yale L. J. 134, 142, 144.

It is also a question on which, insofar as clause (C) is concerned, the states are widely divided and their opinions have varied, as some of the decisions cited below show.

Allowing Compensation

Alabama—(Appeals Tribunals' Decision 1248, Feb. 26, 1943).

Arkansas—(Board of Review Decision No. 240—BR, Jan. 21, 1946).

California—(Appeals Board Benefit Decision No. 1001 3494, October 11, 1944 as reported in C. C. H. Unemployment Insurance Law, California Par. 8479.-02

Illinois—(Board of Review Decision No. 44—BRD—499, August 10, 1944, 8 Benefit Series, No. 1, p. 39.*

Kansas—(Matter of Phillips,), Appeal Tribunal,

Disallowing Compensation

Colorado—(Department of Employment Security, Raymond O. Hope, Senior Claims Deputy v. Fred Restaw and E. Myer Rifkin, Referee. (DD—848-43) unreported).

Delaware—(Bigger v. Unemployment Comp. Com., 46 Atl. (2d) 137 (Super., 1946).

Florida—(Speer v. Industrial Commission, Super. Ct., 1945, C. C. H. Unem. Ins. Serv. (Fla.) Par. 13, 521, "*semble*")

Georgia—(McAllister v. Industrial Electrical Co., Appeal Tribunal. May 25, 1944. 7 Benefit Series

* Published monthly by Social Security Board.

Allowing Compensation (Cont'd.)

Appeal No. 804, Apr. 14, 1943).

Massachusetts — (Decision of Review Examiner, No. 9204—RE, April 10, 1944. 7 Benefit Series, No. 8, page 71.)

Michigan — (Referee decision No. B4-117, March 17, 1944. 8 Benefit Series 9 506—Mich.—A; Appeal Board Decision No. B4-3535-RM-2622, February 8, 1946. 9 Benefit Series 10735.)

Mississippi—(Board of Review Decision No. BR-33-43, April 17, 1943.)

Nebraska—(Appeal Tribunal's Decision Docket No. 117, January 31, 1942.)

New York—(Appeals Board Case No. 10,645-44, July 24, 1944, 7 Benefit Series No. 1, p. 103.)

North Carolina — (Unemployment Comp. Comm., Decision No. 478, June 18, 1943, 6 Benefit Series No. 12, p. 135.)

Oklahoma—(Board of Review Decision, Docket No. 712, OAT Docket No. 5071, No. 53-AT-45, September 17, 1945, 8 Benefit Series No. 12, page 132.)

Disallowing Compensation (Cont'd.)

#11, p. 43.*)

Indiana—No. 45—R—49, 9 Benefit Series, No. 3, Oct. 17, 1945.

Kansas — (Appeals Referee's Decision No. 1258, Nov. 22, 1944).

Oregon—(Appeals Referee decision, No. 43-RA-11, August 12, 1943, 7 Benefit Series No. 2 p. 112).

Utah—(Appeals Referee Decision, No. 44-A-236, May 22, 1944, 8 Benefit Series No. 1, p. 137).

Washington—(Appeals Examiner, No. 9853, May 14, 1945. 8 Benefit Series No. 9, p. 204).

Allowing Compensation (Cont'd.)	*Disallowing Compensation (Cont'd.)*
Tennessee—(Appeal Tribunal Decision No. 41-AT-351, December 10, 1941).	
Virginia — (Unemployment Comp. Comm. Decision No. D-888, M. S.-249, October 15, 1943).	

Finally, it is a question which this court ultimately will have to determine.

WHEREFORE, petitioner prays that this court may issue its writ of *certiorari* to review the decision of the court below.

JOHN SEIFING,
By FRANK B. MURDOCH,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION

I. Outline of Argument

This argument is confined to the propriety of granting the present writ of *certiorari* and is based upon the points above set forth under the heading Reasons Relied on for Allowance of Writ.

II. Argument

In *Steward Machine Co.* v. *Davis,* 301 U. S. 548 (1937), this Court in upholding the constitutionality of the Federal Social Security Act had occasion to pass on the purpose and meaning of Section 903 of the Act. In that case the court said of the requirements of the Section (at p. 593):

> "A credit to taxpayers for payments made to a State under a state unemployment law will be manifestly futile in the absence of some assurance that the law leading to the credit is in truth what it professes to be. An unemployment law passed in such a way that the unemployed who look to it will be deprived of reasonable protection is one in name and nothing more. What is basic and essential may be assured by suitable conditions. The terms embodied in these sections are directed to that end."

The only standards set up by the Act relating to the minimum conditions of work an unemployed individual may be compelled to accept on penalty of losing his compensation are found in Section 903 (a) (5) of the Act. All the states have enacted laws in harmony with the Act. These laws, including the Pennsylvania law, here applied, all incorporate the standards set forth in Section 903 (a) (5) of the Act.

26 Alabama Code Ann. Sec. 214 E (2) (b) and (c).

56 Arizona Code Ann. Sec. 1005 (c)((2) and (3).

Arkansas Stat. (1937) Sec. 8553(c). . . . California Laws (1935) c. 352, Sec. 13(b(2) and (3) as amended. . . .

167 A Colorado Stat. Ann. Sec. 5 (c) (2) (b) and (c).

Connecticut Gen. Stat. (1939 Supp.) Sec. 1339e(b)(1) (B) and (C).

Delaware Laws (1947) (S. 78) Sec. 5 (c) (1) (A) and (D).

Florida Stat. Ann. Sec. 443.06 (2) (b) 2 and 3.

Georgia Code Ann., c. 54-610 (c) (2) (B) and (C).

Idaho Code Ann. Sec. 43-2409 (d) (2) and (3).

Illinois Stat. Ann. c. 45.134 (c) (2).

Indiana Laws (1947) Sec. 1502 (b).

Iowa Code (1946) Sec. 96.5-3 b (2) and (3).

Kansas Gen. Stat. Ann. c. 44-706 (c).

Kentucky Rev. Stat. Ann. Sec. 341.100 (2) (b) and (c).

Louisiana Gen. Stat. Ann. Sec. 4434.4 (c) (2) (b) and (c).

Maine Rev. Stat. (1944) c. 24 Sec. 5 (c) (2) (b) and (c).

Maryland Code Ann.—Art. 95A, Sec. 5 (d) (2) (b) and (c).

Massachusetts Ann. Laws, c. 151 A Sec. 25 (c) (2) and (3).

Michigan Stat. Ann. Sec. 17.531 (b).

Minnesota Stat. Ann. Sec. 268.09 (5) (b) (2) and (3).

Mississippi Code (1942) Sec. 7379 (d) (2) (B) and (C) as amended.

Missouri Rev. Stat. Ann. Sec. 9431 I (c) (2) (B) and (C).

Montana Rev. Code Ann. Sec. 3033.8 (c) (2) (b) and (c).

Nebraska Rev. Stat. Sec. 48-628 (c) (2) (ii) (iii).

Nevada Comp. Laws Ann. (1921-1941 Supp.) Sec. 2825.05 (c) (2) (b) and (c).

New Hampshire Revised Laws (1942) c. 218, Sec. 4 (C) (2) (b) and (c).

43 New Jersey Stat. Ann. Sec. 21-5 (c) (2) (b) and (c).

New Mexico Stat. Ann. Sec. 57-805 (c) (2) (b) and (c).

New York Stat. Ann. (McKinney), Labor Law Sec. 593-2 (a) and (d).

North Carolina Gen. Stat. Sec. 96-14 (c) (2) (b) and (c).

North Dakota Revised Code (1943) c. 52.0636—2 and 3.

Ohio Gen. Code Ann. Sec. 1345-6 e (1) and (4).

40 Oklahoma Stat. Ann. Sec. 215 (c) (2) (B) and (C).

Oregon Comp. Laws Ann. Sec. 126-705 (c) 2 (a) (B) and (C).

Pennsylvania—quoted *supra.*

Rhode Island General Laws (1938) c. 284, Sec. 7 (8) (b) and (c).

South Carolina Code of Laws (1942) Sec. 7035-85 (c) (2) (B) and (C).

South Dakota Code (1939) c. 17.0830 (3) (b) (2) and (3).

Tennessee Laws (1947) c. 29, Sec. 5 D (2) b and c.

Texas Civ. Stat. Ann. art. 5221 b-3 (c) (2) (b) and (c).

Utah Code Ann. (1943) Tit. 42-2a-5 (c) (2) (B) and (C).

Vermont Laws (1937) Public Act No. 1 Special Session December 1936, Sec. 5 (c) (2) II and III.

Virginia Code Ann. (1942) Sec. 1887 (97) (c) (2) (b) and (c).

Washington Sess. Laws (1945) c. 35, § 79, pp. 116-117.

West Virginia Code Ann. (1943) Sec. 2366 (80) (2) and (3).

Wisconsin Code (1945) c. 108.04 (9) (b) and (c).

Wyoming Comp. Stat. Ann. (1945) Sec. 54-105 A II (b) (ii) and (iii).

An interpretation of these standards, such as the one here made by the Supreme Court of Pennsylvania, which restricts the applicability of the standards, involves thus a question of fundamental public importance, as important as, if not more important than, the question involved in *Unemployment Compensation Comm.* v. *Aragon,* 329 U. S. 143, 145, 91 L. Ed. 143, 145 (Dec. 9, 1946), in which this Court took *certiorari* to determine the proper interpretation of a Section of the Alaska Unemployment Compensation Act involving the meaning of the term "labor dispute," for in that case the issue did not directly concern any Federal statutory standards.

So far as counsel for petitioner is aware, this Court has never passed on the interpretation to be given to the provisions here involved. As is pointed out in the petition for *certiorari, supra,* pp. 15-16, there is a wide split of authority among the states as to whether, under the circumstances of this case, petitioner was offered work which required him as a condition of being employed to resign from a *bona fide* labor organization.

Moreover, the question as to whether the work offered to petitioner was work which offered wages, working hours or other conditions of work substantially less favorable to the individual than those prevailing for similar work in the locality raises a further question of importance in the administration of the Act. Petitioner takes the position that in the record as made the decision of the Supreme Court of Pennsylvania substantially deprives the statutory safeguard of any meaning. Petitioner contends that there was insufficient evidence in the record for board or court to find that the work offered was of equivalent nature, that the burden of going forward with the evidence and of proving the lack of equivalence was placed on petitioner, and that to place such a burden on him, an unemployed individual;

i. e., to require him to prove the jobs were different, the localities not the same, the wages substantially lower than his own work and the like, was to render nugatory any protection supposedly given by the Act.

Cf. Morrison v. *California*, 291 U. S. 82 (1934).

III. Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for a writ of *certiorari* should be granted.

FRANK B. MURDOCH,
Philadelphia, Pa.,
Counsel for Petitioner.

FILE COPY

No. [illegible]

JOHN KEEFFE

Petitioner,

vs.

BARCLAY WHITE COMPANY, A CORPORATION, THE EMPLOYMENT COMPENSATION BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, COMMONWEALTH OF PENNSYLVANIA, AND GENERAL BUILDING CONTRACTORS ASSOCIATION,

Respondents.

BRIEF OF BARCLAY WHITE COMPANY AND OF GENERAL BUILDING CONTRACTORS ASSOCIATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

ALBERT SMITH FAUCET,

EDWARD PAUL SMITH,

Attorneys for Barclay White Co. and General Building Contractors Association.

[illegible] FIDELITY BLDG.

PHILADELPHIA, PA.

The Legal Intelligencer, 602 Bailey Bldg., Phila. 7.

INDEX

SUBJECT INDEX

	Page
I. The Question Presented	2
II. Interpretation of Pennsylvania Unemployment Compensation Law by Supreme Court of Pennsylvania	2
III. The Statutes Involved	4
Acts of Congress	4
Pennsylvania Statutes	5
Acts of Parliament (as to Interpretation of American statutes)	6
IV. Statement of Facts	6
V. Elimination of Collateral Issues	7
VI. ARGUMENT	10
(a) Summary of Argument	10
(b) Lack of Interest of Petitioner	12
(c) Absence of Divergence in State Courts of Last Resort	14
(d) Slight and Decreasing Divergence in Administrative Tribunals	15
Table of Decisions Allowing and Disallowing Compensation to Union Members Declining Referral to non-union Job	15
(e) Prototype of unemployment acts in English National Insurance Act (1911); British Umpire Decisions	25
(f) Conclusion	28

CITATIONS

Statutes

Pennsylvania Acts of Assembly:

Unemployment Compensation Law of Penna., Pa. Laws December 5, 1936, 2nd Extraordinary Session, in Pa. Laws 1937, p. 2897, et seq. 2, 4, 25

CITATIONS—*Continued*

Page

Pa. Laws, 1943, No. 157, pp. 337-338 Amending the Unemployment Compensation Law 2, 5, 10

Pa. Laws, 1943, No. 312, pp. 718, 729 Amending the Unemployment Compensation Law 2, 5, 10

United States Acts of Congress:

Social Security Act of 1935, Title IX, Sec. 903(a) (5) (B) and (C), and (a) (6); 53 Stat. 1391, 42 USCA Sec. 1103 ..... 2, 4, 11, 13

Internal Revenue Code, 26 USCA Sec. 1603 (a) (5) (B) and (C), and (a) (6) 2, 4

Acts of Parliament

National Insurance Act of 1911, Stat. 1 & 2 Geo. V, Ch. 55 Sec. 87. Chitty's Annual Statutes, Vol. 17, Sec. 87 p. 185 ..... 6, 13, 25

Amendment to foregoing 25 Geo. V Ch. 8, Chitty, Vol. 29, Part III, p. 757, Sections 27 & 28 (p. 776) . 6, 25

Cases

Bigger v. Unemployment Compensation Commission of the State of Delaware, 53 Atl. (2d) 761 (June 16, 1947) 14

Chambers v. Owens-Ames-Kimball Co., 146 Ohio State 559, 67 N. E. (2d) 439 (May 22, 1946) 12, 14

Copeland v. Oklahoma Employment Security Commission, 172 Pac. (2d) 420. (1946) 9

Lawrence Baking Co. v. Unemployment Compensation Commission, 308 Mich. 198, 13 N. W. (2d) 260 (Feb. 24, 1944) 25

Magner v. Kenney, 141 Neb. 122, 2 N. W. (2d) 689 (March 6, 1942) 13, 25

Decisions of State Administrative Tribunals

Alabama—Code: 1248, Feb. 26, 1943 17

Arkansas—Code: 43-AT-182, Benefit Series Vol. 7, No. 6, Dec. 30, 1943, p. 13 24

Arkansas—Code: 240-BR; Ben. Ser. Vol. 9, No. 6, Jan. 29, 1946, p. 28 17

CITATIONS—*Continued*

	Page
California—Code: 3494; Ben. Ser. Vol. 8, No. 2, Oct. 11, 1944, p. 48	16
Georgia—Code: 4801; Ben. Ser. Vol. 10, No. 2, July 1, 1940, p. 41	16
Georgia—Code: At-318; Ben. Ser. Vol. 7, No. 11, May 25, 1944, p. 43; McAllister v. Industrial Elec. Co.	16
Illinois—Code: 44-BRD-499; Ben. Ser. Vol. 8, No. 1, Aug. 10, 1944, p. 39	16
Indiana—Code: 44-A-1072; Ben. Ser. Vol. 8, No. 2, Aug. 25, 1944, p. 73	16
Kansas—Code: Appeal No. 804; Ben. Ser. Vol. 6, No. 10, Apr. 14, 1943, p. 107; In the Matter of Phillipa	17
Kansas—Code: 1258; Ben. Ser. Vol. 8, No. 5, Dec. 2, 1944, p. 67	17
Massachusetts—Code: 9186-RE; Ben. Ser. Vol. 7, No. 8, Apr. 6, 1944, p. 69	18
Michigan—Code: B4-3535-RM-2622; Ben. Ser. Vol. 9, No. 8, Feb. 8, 1946, p. 64	18
Michigan—Code: B4:117; Ben. Ser. Vol. 8, No. 6, Mar. 17, 1944, p. 16	18
Mississippi—Code BR-33-43; Ben. Ser. Vol. 7, No. 3, Apr. 17, 1943, p. 40	16
Missouri—Code: A-357-44; Ben. Ser. Vol. 7, No. 12, Mar. 15, 1944, p. 79	17
Nebraska—Code: Docket No. 117; Jan. 31, 1942	19
New Jersey—Code: At-12396-C; June 13, 1945	18
New York—Code: 10,654-44; Vol. 7, No. 12, July 24, 1944, p. 103	19
North Carolina—Code 478; Ben. Ser. Vol. 6, No. 12, p. 135 (June 18, 1943)	16
North Carolina—Code 8849-AT-45; Ben. Ser. Vol. 9, No. 6, Sept. 18, 1945, p. 93	19
Oklahoma—Code: 629-At-44; Ben. Ser. Vol. 8, No. 3, Aug. 29, 1944, p. 106	18
Oklahoma—Code: 31-BR-45; Ben. Ser. Vol. 8, No. 12, Aug. 29, 1945, p. 132	16

CITATIONS—*Continued*

Page

Oregon—Code: 43-R4-91; Ben. Ser. Vol. 7, No. 2, Aug. 1, 1943, p. 112 ..... 16, 19

Pennsylvania—Code: 8067-Pa. R.; Ben. Ser. Vol. 6, No. 7, Aug. 19, 1942, p. 101 24

Pennsylvania—Steinberg Case; Code: B-44-99 F-464 (R. 49) (Nov. 30, 1944) 24

Tennessee—Code: 41-At-351; Dec. 10, 1941 ..... 12, 16

Tennessee—Code: 47-BR-9; Ben. Ser. Vol. 10, No. 7, Jan. 24, 1947, p. 109 ..... 12, 19

Utah—Code: 44-A-236; Ben. Ser. Vol. 8, No. 1, May 22, 1944, p. 137 20

Utah—Code: 44-C-66; July 19, 1944 20

Virginia—Code: D-888, MS-249; Oct. 15, 1943 ..... 12, 16

Virginia—Code: D-1541, MS-678; Ben. Ser. Vol. 10, No. 5, July 12, 1946, p. 144 ..... 12, 21

Washington—Code: A-4281; Ben. Ser. Vol. 8, No. 9, May 14, 1945; p. 204 21

Washington—Code: A-4833; Ben. Ser. Vol. 9, No. 7, Dec. 7, 1945; p. 126 22

West Virginia—Code: 785; Ben. Ser. Vol. 7, No. 12, Dec. 8, 1943, p. 154 23

British Umpire's Decisions

B U-408 27

B U-4747 ..... 26, 27

Miscellaneous

Halsbury's Laws of England (2nd Ed., 1940) Vol. 34, p. 526 26

Analytical Guide to Decisions by the Umpire Respecting Claims for Benefits (His Majesty's Stationery Office, London, 1938) (on file in Library of Social Security Administration, Fourth Street and Independence Ave., S. W., Washington, D. C.); Part VI "Attitude of Trade-Unionists to Non-union Shops and Workmen", Sec. 348 26

Same pamphlet, Case No. 7681 (31-5-1924) B U-408 27

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 144

JOHN SEIFING
Petitioner,

vs.

BARCLAY WHITE COMPANY, A CORPORATION, UNEMPLOYMENT COMPENSATION BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, COMMONWEALTH OF PENNSYLVANIA, AND GENERAL BUILDING CONTRACTORS ASSOCIATION,
Respondents

BRIEF OF BARCLAY WHITE COMPANY AND OF GENERAL BUILDING CONTRACTORS ASSOCIATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Barclay White Company, a corporation, and the General Building Contractors Association, two of the Respondents, respectfully submit this brief in opposition to the Petition of John Seifing for a writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

I. THE QUESTION PRESENTED

We regret the necessity of pointing out certain inaccuracies which are embodied in Petitioner's statement of the queston presented. On the record the question is whether the Supreme Court of the Commonwealth of Pennsylvania erred in its interpretation of the act of the legislature of the Commonwealth of Pennsylvania known as the "Unemployment Compensation Law", (December 5, 1936, Pa. Laws 1937 p. 2897, Pa. Stat. Ann. (Purdon) Title 43 Sec. 751, et seq.) as amended by Pa. Laws 1943, No. 157 p. 337 and Pa. Laws No. 312, pp. 718, 727, (quoted in Petition p. 3) ; and whether such error of the state court presents a federal question on the basis that it was the duty of the state court to interpret words and phrases found in the act as having identical meaning of such words and phrases when used in the Social Security Act of 1935, Title IX Sec. 903(a) 5 (B) and (C), 49 Stat. 640, transferred to Internal Revenue Code, U.S.C.A. Sec. 1603 (5) (B) and (C), (quoted in Petition pp. 2-3).

II. INTERPRETATION OF THE PENNSYLVANIA UNEMPLOYMENT COMPENSATION LAW BY THE SUPREME COURT OF PENNSYLVANIA

The State court stated the question (R. 102) :

> The question for decision is whether or not a member of a labor union is entitled to unemployment benefits when he has refused a referral to suitable work in an open shop, for the reason that to accept such employment would result in his suspension or expulsion from his union.

Its answer was (R. 107) :

> It would do great violence to the clear and unequivocal wording of the statute to hold that a labor or any other organization can control payments of

unemployment benefits to its members by merely forbidding them to work at wages less than those set by it, or with certain persons, or at certain places, or under certain conditions. If eligibility under such conditions is to be added to the Act, that must be done by the Legislature, and not the Courts.

And (R. 109):

Claimant having refused "suitable work" without "good cause" is not entitled to unemployment benefits, and the learned Superior Court should have reversed the order of the board and reinstated the decision of the referee.

Judgment reversed, and the order of the referee affirming the bureau's decision disqualifying claimant from receiving credit for claims filed by him for compensable weeks ending February 27, March 5 and 12, 1944, is reinstated.

The real question presented in the petition for a writ of certiorari, is whether the Supreme Court of Pennsylvania, through the passage of the Social Security Law, was deprived of any right of independent judgment as to the meaning of the Pennsylvania Unemployment Compensation Law, and was obligated first to ascertain the meaning of corresponding words and phrases found in the Social Security Law, and then to use and apply such meanings in construing the act of the legislature of Pennsylvania, and that its apparent failure to follow such course presents a federal question.

The able counsel for the Petitioner, in phrasing the Question Presented, has used the words, ". . . the acceptance of which job . . . would have required his giving up his membership in his labor union." (Petition p. 2).

The facts in the record do not justify an assertion or implication that the employer had required the Petitioner to give up his membership in his labor union. The facts are discussed *infra* page 6.

III. THE STATUTES INVOLVED

Acts of Congress:

Social Security Act of 1935, Title IX, Sec. 903(a) (5) (B) and (C), and (a) (6): 42 USCA Sec. 1103: transferred to Internal Revenue Code, 26 USCA Sec. 1603, (a) (5) (B) and (C), and (a) (6):

1603. Approval of state laws

(a) Requirements. The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices or such other agencies as the Board may approve.

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions.

(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to joint a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time. As amended Aug. 10, 1939, c. 666, Title VI, Sec. 611, 53 Stat. 1391.

Pennsylvania statutes:

Unemployment Compensation Law, December 5, 1935,

Pa. Laws 1937 p. 2899 et seq. Pa. Stat. Ann. (Purdon) Title 43 Sec. 751 et seq.

Amendment thereto Pa. Laws 1943, No. 157 pp. 337-338:

> "Sec. 402. Ineligibility for Compensation. An employee shall be ineligible for compensation or waiting period credit for any week—
>
> "(a) In which his unemployment is due to failure, without good cause, either to apply for suitable work at such time and in such manner as the department may prescribe or to accept suitable work when offered to him by the employment office or by his previous employer. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training and experience, and the distance of the available work from his residence."

Further amendment to Pennsylvania Unemployment Compensation Law, Pa. Laws 1943, No. 312, pp. 718, 727:

> "Sec. 4. Definitions. The following words and phrases, as used in this act, shall have the following meanings unless the context clearly requires otherwise . . .
>
> "(r) 'Suitable Work' means all work which the employee is capable of performing, except work in which—(1) the position offered is vacant, due directly to a strike, lockout, or other labor dispute, or (2) the remuneration, hours or other conditions of the work offered are substantially less favorable to the employee than those prevailing for similar work in the locality, or (3) as a condition of being employed, the employee would be required to join a company union, or to resign

from, or refrain from joining, any bona fide labor organization."

Acts of Parliament (relevant to interpretation of American statutes):

National Insurance Act of 1911. 1 and 2 George V, Chap. 55 (1911), Chitty's Annual Statutes, Vol. 17, Sec. 86, p. 184.

Amendment thereto, (1935), 25 Geo. V, Chap. 5, Chitty, Vol. 29, Part II, page 757. Sec. 27 (p. 776):

> "An insured contributor who loses his employment through his misconduct or who voluntarily leaves his employment without just cause shall be disqualified for receiving benefit, etc."

And Section 28 (p. 776):

> "If on a claim for benefit it is proved by an officer of the Ministry of Labor—
>
> (a) that the claimant, after a situation in any employment which is suitable in his case has been notified to him by an employment exchange or other recognized agency, or by or on behalf of an employer, as vacant, or about to become vacant, has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him . . . shall be disqualified, etc."

IV. STATEMENT OF FACTS

The statement of facts in the Petition (Petition pp. 4-8), insofar as it recites or summarizes the facts in the record (namely on pages 4, 5, 6 and the first five lines of page 7 of the Petition), is with one exception, substantially correct. The exception is the statement (middle of page 5 of the Petition):

If the petitioner had accepted the job offered him he would have been suspended or compelled to resign his membership in the union and would have lost his accumulated benefits (R. 24, 60-62).

The testimony of the Petitioner appears on page 23 of the Record:

By Mr. Murdoch:

Q. Did you talk to anyone in the Union about accepting this job?

A. That's right.

Q. To whom did you talk?

A. To the Financial Secretary.

Q. What's his name?

A. John Cregan.

Q. And where did you talk to him?

A. At the hall before I went to see the Sun Ship.

Q. At the Union headquarters?

A. Yes, at 18th and Spring Garden Streets.

Q. What is the address, 1803 Spring Garden Street?

A. That's right.

Q. What did he tell you?

A. He told me I would be suspended out of the Union if I took the job.

Frank B. Murdoch, Esq., then asked (R. 24):

Q. Then if you took this job you would have to resign, or be suspended from the Union, is that correct?

A. That's correct.

Although if Seifing did not resign he would be suspended, there is not one word of testimony in that any employer or prospective employer would have required Seifing to resign.

V. ELIMINATION OF COLLATERAL ISSUES

Judge Reno, speaking for the Superior Court of Pennsylvania, said in regard to collateral questions (R. 90):

> The Sun Company was engaged in ship building contracts with agencies of the United States government, in the then war emergency, with an insufficient supply of labor to perform them. No claim is made that the rate of pay was not adequate for the kind of service demanded, or that the hours or other conditions of the work were less favorable to claimant than those prevailing in the locality for similar work. The position offered was not vacant because of any labor dispute at the Sun shipyards. No condition was attached, requiring claimant to join a company union or to resign from the union of which he was a member. Claimant was qualified, by prior experience as a carpenter, to do the work without risk to his health or safety, and the distance between his home and the shipyard at Chester was less than that traveled in his former employment, with a saving in traveling time.* The referred work was suitable within the meaning of 4 (r). The decisive question is whether claimant refused it "without good cause."

The Petitioner took no appeal or cross appeal from the decisions of the Superior Court.

The Supreme Court of Pennsylvania in like manner pointed out the elimination of any side issues (R. 104):

> The evidence showed that the distance between his home and the company's shipyard in Chester is less than that travelled in his former employment with appellant. The position offered him was not vacant because of any strike, lockout or other labor dispute. Claimant did not contend that he refused the referral because the pay, hours or other working conditions

---

* Testimony of Abraham Polis, Junior interviewer (R. 28): Question by the Referee: How long would it take the claimant to go from his residence to the railroad station, he lives at 655 N. 15th St.?

By Mr. Polis: I would say about ten minutes.

were less favorable to him than those prevailing for similar work in the locality.

Yet the learned counsel for the Petitioner would appear to welcome the vitalizing of issues which are in no wise involved in the present proceedings. In his brief (Petition and Brief p. 15) he suggests:

> Moreover, the question as to whether the work offered to petitioner was work which offered wages, working hours or other conditions of work substantially less favorable to the individual than those prevailing for similar work in the locality raises a further question of importance in the administration of the Act.

Still another issue is broached in the Brief of the Petitioner which has not been mentioned at any earlier stage in the litigation and not touched upon elsewhere in the record or in any brief of any party. We read at page 15 of the Petitioner's Brief:

> Petitioner contends that there was insufficient evidence in the record for board or court to find that the work offered was of equivalent nature, that the burden of going forward with the evidence and of proving the lack of equivalence was placed on petitioner, and that to place such a burden on him, an unemployed individual; i. e., to require him to prove the jobs were different, the localities not the same, the wages substantially lower than his own work and the like, was to render nugatory any protection supposedly given by the Act.

Even if a new issue could now be injected into this case an answer on the merits would be found in a decision of the Supreme Court of Oklahoma in the case of *Copeland vs Oklahoma Employment Security Commission*, 172 Pac. (2d, 420. Judge Riley said at page 420:

"(1) The rule in an action of this nature is that the burden of proof to establish a claimant's right to benefits under the Employment Security Act rests upon the claimant. Queener v. Magnet Mills, Inc., 179 Tenn. 416, 167 S.W. 2d 1; S. S. Kresge Co. v. Unemployment Compensation Commission, 349 Mo. 590, 167 S.W. 2d 838; Haynes v. Unemployment Compensation Commission, Mo. Sup., 183 S.W. 2d 77, 80.

"In the latter case, it is said: '. . . we think it is apparent that the burden of proof to establish a claimant's right to benefits under the Unemployment Compensation law rests upon the claimant. Queener v. Magnat Mills, 179 Tenn. 416, 167 S.W. 2d 1. An unemployed individual is eligible to receive benefits only if the commission finds that the required conditions have been met. The claimant assumes the risk of non-persuasion and we think the general rule applicable to ordinary court proceedings applies. 'The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue. . . . This burden of proof never shifts during the course of the trial.' "

VI. ARGUMENT

(a) Summary of Argument

The argument is limited to the real issue presented by the Petition. Should a writ of certiorari be issued by your Honorable Court to the Supreme Court of the Commonwealth of Pennsylvania to review its interpretation of the Pennsylvania Unemployment Compensation Act (Pa. Laws 1943 No. 157 pp. 337-338 and Pa. Laws 1943 No. 312 pp. 718, 727, quoted in Petition pp. 3-4) whereby compensation was not allowed to a member of a labor union who had declined a referral to an otherwise suitable job

on the sole ground that the position was under open shop conditions, which had been disapproved by his union, which had asserted that, if he accepted the referral, the Union would suspend or expel him from membership.

The soundness or the unsoundness of the state court's interpretations of the statute is not discussed in the present Brief but merely the question whether a writ of certiorari should issue.

The respondents, Barclay White Co. and General Building Contractors Association, respectfully submit several reasons, of which the following is a summary:

1. The Petitioner, John Seifing, being a claimant under the Pennsylvania unemployment compensation law, is no wise concerned with (a) proper interpretation of the Social Security Act, or (b) whether it is or is not the duty of the Supreme Court of Pennsylvania to adhere to any established interpretation of particular words and phrases found in the Social Security Act, for the Social Security Act expressly affirms the unrestricted power of the Commonwealth of Pennsylvania to amend or repeal the state act (*supra* p. 4); or (c) whether there is or is not likelihood that the Social Security Board (now Administration), will or will not refuse certification or decline approval of the Pennsylvania unemployment compensation law by reason of the interpretation given the Pennsylvania act by the court of last resort of the state.

2. There is no discoverable divergence of decision among the state courts of last resort as to the basic interpretations of their respective state unemployment compensation statutes as to allowance or disallowance of benefits to a claimant who, being a member of a union, declines a referral otherwise suitable on the ground that it involves open shop conditions, and on the ground that, if he accepted it, he would be suspended or expelled by the union.

3. There appears to be but a slight and decreasing divergence of opinion among administrative tribunals operating under the various state unemployment compensation

statutes on the question as to whether a union member is entitled to unemployment compensation benefits who declines a referral because of non-union working conditions and threat of suspension or expulsion by the labor union. Some months after the announcement on May 22, 1946, of the decision of the Supreme Court of Ohio in *Chambers* v. *Owens-Ames-Kimball Co.*, 146 Ohio State 559, 67 N. E. (2d) 439, administrative tribunals in two States (Tennessee and Virginia), announced decisions in harmony with the ruling in the Ohio case and disregarded their earlier rulings to the contrary. (Tenn. Benefit Series Vol. 10, No. 7 p. 109, Code 47-BR-9, Jan. 24, 1947, disregarding earlier decision to the contrary, Tenn. Code 41-AT-351, Dec. 10, 1941, not in Benefit Series, cited in Petition p. 11; and Va. Ben. Ser. Vol. 10, No. 5, p. 144, Code D-1541; MB-678. July 12, 1946, disregarding Va. Code B-888, MS-249, October 15, 1943, not in Benefit Series, cited in Petition p. 11)

There remain a few states whose administrative tribunals (in the apparent absence of a decision of the courts of such state) seem to support the view that a referral to non-union work, disapproved by the claimant's union, does not impair the right to obtain unemployment compensation under the state law.

But there are or appear to be ten or more states whose administrative tribunals, in the absence of a court decision of such state, have applied the view enunciated in the instant case by the Supreme Court of Pennsylvania, and by the Supreme Court of Ohio in the Chambers case.

4. Turning to the legislative history of the various state unemployment compensation laws the Social Security Act seems to be an intermediate stage between Acts of Parliament and state legislation.

(b) Lack of Interest of Petitioner

The Petitioner seems to have but an academic interest in the question whether the Social Security Board (now

Administration would or would not have grounds to disapprove of the construction given by the Supreme Court of the Commonwealth of Pennsylvania, to the Pennsylvania Unemployment Compensation law, or whether the Administration might withdraw or cancel certificate of approval of the Pennsylvania statute, thereby negativing the further operation of the credit clause (up to 90 percent, included in the Social Security Law). While the termination of the credit now allowed employers who pay social security taxes and also pay Unemployment Compensation taxes designated as "contributions", would adversely affect employers of eight, nothing in the record shows that Seifing falls within the class who would be affected by cancellation of certification.

As a matter of legislative history, many of the phrases and words in the American statutes can be found in substantially similar forms in various English Acts of Parliament, dating back to the National Insurance Act of 1911 (Stat. 1 & 2 Geo. V. Ch. 55 Sec. 87). This legislative source of much of the language found in the various state unemployment laws was pointed out by the Supreme Court of Nebraska in *Magner v. Kenney*, 141 Neb. 122, 129, 2 N. W. (2d) 689 (March 6, 1942).

The opinion by Judge Ellis, reads:

> "The language of our unemployment compensation law * * * was a substantial reënactment of the English National Insurance Act of 1911 (See Stat. 1 & 2 Geo. V. Ch. which was amended in 1924 by section 4 (1) Ch. 30, St. 14-15 Geo. V.). This language, it appears, had received a settled construction by the English authorities charged with the administration of this English act long prior to the adoption of it by ourselves.

(For comment as to the Acts of Parliament see *infra* p. 25.)

(c) Absence of Divergence Among the Courts of Last Resort in Interpreting Corresponding Sections of State Unemployment Compensation Statutes

The question involved in the instant case came before the Supreme Court of the State of Ohio in *Chambers vs Owens-Ames-Kimball Co.*, 67 N. E. 2d 439, and that court came to the same conclusion on May 22, 1946 as was reached in the instant case by the Supreme Court of Pennsylvania on January 7, 1947.

The Supreme Court of the State of Delaware, on June 16, 1947, in the *Bigger vs Unemployment Compensation Commission*, 53 Atl. 2d 761, likewise came to the same conclusion.

Judge Carey for the Delaware Court said:

> "As far as we are aware, the highest Court of only two other states have passed upon this question, Ohio and Pennsylvania. Both of them have expressed views similar to those set forth above. The Ohio case of Chambers v. Owens-Ames-Kimball Co., Ohio Appeals, 62 N. E. 2d 496, upon (which) the Court below relied, was a lower court case which has since been reversed by the Supreme Court of that State, even though the Ohio statute is somewhat broader than the Delaware Law; See 146 Ohio St. 559, 67 N. E. 2d 439, 165 A. L. R. 1373; the Pennsylvania case of Barclay White Co. v. Unemployment Compensation Board of Review, 356 Pa. 43, 50 Atl. 2d 336, decided after the opinion in one Superior Court was published, is to the same effect.

The Supreme Court of Pennsylvania in the instant case cited the Bigger case as decided by the Superior Court of Delaware, 46 Atl. (2d) 137, as well as the Chambers case as finally determined by the Supreme Court of Ohio. There is no known decision to the contrary by the court of last resort of any state.

(d) Slight and Decreasing Divergence of Opinion Among Administrative Tribunals Under the Several State Unemployment Compensation Statutes

The Social Security Board (now Administration) publishes in its monthly Benefit Series reports of many but by no means all of the rulings of Referees, Examiners and Boards of Review in each of the state unemployment compensation systems. The Benefit Series also includes the full text of all court opinions of appellate courts in unemployment compensation cases. The lag in publishing court decisions is about five or six months.

Let us compare the decisions as they appear in the Benefit Series or elsewhere, of state courts and state administrative tribunals upon the question.

Allowing compensation to Union member declining referral to open-shop job.	*Denying Compensation to union member declining referral to open shop job.*
Court Decisions:	*Court Decisions*
None	Delaware—Bigger v. Unemployment Compensation Commission Decided by Supreme Court of Delaware on June 16, 1947 Reported in 53 Atl. (2d) 761 (Discussed *supra* p. 14) (In Seifing's Petition p. 9)
	Ohio—Chambers v. Owens-Ames-Kimball Co. Decided by Supreme Court of Ohio on May 22, 1946, 146 Oh. Stat. 559, 67 N.E. (2d) 439 (Discussed *supra* p. 14) (Not in Seifing's Petition)

Administration Decisions

(Cited in Seifing's Petition pp. 9-11)

1. California—Benefit Series
   Vol. 8 No. 2, p. 48
   October 11, 1944
   Code: 3494
2. Illinois—Benefit Series
   Vol. 8 No. 1 p. 39
   August 10, 1944
   Code: 44-BRD-499
3. Mississippi—Benefit Series
   Vol. 7, No. 3, P. 40
   April 17, 1943
   Code: BR-33-43
4. Oklahoma—Benefit Series
   Vol. 8, No. 12, p. 132
   August 29, 1945
   Code: 31-BR-45
5. North Carolina — Ben. Ser. vol. 6, No. 12 p. 135
   June 18, 1943
   Code: 478
   (See Note *infra* p. 19)
6. Tennessee — (Note in Benefit Series)
   December 10, 1941
   Code: 41-At-351
7. Virginia—(Not in Benefit Series)
   October 15, 1943
   Code: D-888, MS 249

Administration Decisions

1(a) Georgia — Benefit Series
   Vol. 10 No. 2, p. 41
   July 1, 1940
   Code: 4801
   Declined referral. He testified that he could not accept job because he was subject to a heavy penalty by his union for accepting a non-union job. (Not in Seifing's Petition).

1(b) Georgia — Benefit Series
   Vol. 7, No. 11, p. 43
   May 25, 1944
   McAllister v. Industrial Elec. Co.
   Code: At-318
   "The conditions imposed upon claimant that he cannot work in an open shop are conditions placed upon him by his own Union."
   (In Seifing's Petition p. 9).

2. Indiana—Benefit Series
   Vol. 8, No. 2, p. 73
   August 25, 1944
   Code: 44-A-1072
   "A union bartender who refused non-union

Allowing Compensation (Continued)

NOTE: The Petitioner cites each of the foregoing decisions in Petition (pp. 9, 10, 11). Petitioner also cites following decisions distinguishable on their facts:

Alabama—(Not in Benefit Series)
February 26, 1943
Code: 1248
(Seifing's Petition in Supreme Court of Pa. p. 31, quotes mimeographed report. Referral was for a job of different kind of work and was disapproved by the Union).

Arkansas—Benefit Series
Vol. 9, No. 6, P. 28
Code: 240-BR
January 29, 1946
(In Seifing's Brief in Supreme Court of Pa. p. 32. Job paid less than union scale).

Kansas—Benefit Series
Vol. 6, No. 10, P. 107
April 14, 1943
In the Matter of Phillips
Code: Appeal No. 804
(In Seifing's Brief in Supreme Court of Pa. p. 38, referral was for union job as truck driver, disap-

Denying Compensation (Continued)

bar work because acceptance would subject him to fine or expulsion by his union *held* not justified in refusal when threat of expulsion was not imposed by the employer but by the claimant's union" —from headnote in Benefit Series
(In Seifing's Petition p. 10.)

3. Kansas—Benefit Series
Vol. 8, No. 5, p. 67
December 2, 1944
Code: 1258
Carpenter declined referral as a job declared by his union to be "unfair". Ruled that there was no evidence that employer would have required "that he resign from the union to which he belonged."
(In Seifing's Petition p. 10.)

4. Missouri—Benefit Series
Vol. 7, No. 12, p. 79
March 15, 1944
Code: A-357-44
Member AFL declined CIO referral "on the grounds that she would be subject to

Allowing Compensation (Continued)

proved by union for claimant. Was member of Hoisting engineer union.)

Massachusetts—Benefit Series
Vol. 7, No. 8, p. 69
April 6, 1944
Code: 9186-RE
(In Seifing's Brief in Supreme Court of Pa. p. 40)
Union disapproved of member of Vamper's Union accepting referral to job as stitcher "unless it paid the vamper's rate".

Michigan—Benefit Series
Vol. 9, No. 8, p. 64
February 8, 1946
Code: B4-3535-RM-2622
(In Seifing's Brief in Supreme Court of Pa., p. 42. Claimant believed she would lose her seniority if she accepted referral due to union disapproval).

Michigan—Benefit Series
Vol. 8, No. 6, p. 16.
Code: B4:117
March 17, 1944
(In Seifing's Brief in Supreme Court of Pa. p. 40-41, Membership in Union closed to claimant).

Denying Compensation (Continued)

disciplinary action by her union". Held "condition imposed by an individual's union is in itself not sufficient reason for refusing work which is otherwise suitable."
(Not cited in Seifing's Petition).

5. New Jersey—Not in Benefit Series
June 13, 1945
Code: At-12396-C
"Claimant indicated that he was only available for work which he could obtain through his union local". (Not in Seifing's Petition).

6. Oklahoma—Benefit Series
Vol. 8, No. 3, p. 106
August 29, 1944
Code: 629-At-44
"A union laborer who limited the employment he would accept to jobs approved by the business agent of his union, *held* unavailable for work, etc." Headnote in Benefit Series. (Not in Seifing's Petition).

Allowing Compensation (Continued)

Nebraska—Not in Benefit Series
January 31, 1942
Code: Docket No. 117
(In Seifing's Brief in Supreme Court of Pa. at p. 43. Referral of painter was to a union job. Union declined transfer card as helper because he was a journeyman).

New York—Benefit Series
Vol. 7, No. 12, p. 103
July 24, 1944
Code: 10, 645-44
(In Seifing's Brief in Supreme Court of Pa. p. 46). Union refused transfer card since job was under jurisdiction of a different local union which had declared the Navy Yard was "unfair."

NOTE: On Sept. 18, 1945, North Carolina Code 3849-AT-45, Ben. Ser. Vol. 9, No. 6, p. 93.

A union shipyard worker declined a referral of "open shop work," held not to have good cause for refusal. Benefits disallowed.

Denying Compensation (Continued)

7. Oregon—Benefit Series
Vol. 7, No. 2, p. 112
Code: 43-R4-91
August 1, 1943
"No union rule which is in contravention of the Unemployment Compensation Law is greater in authority than the law with respect to the qualifications or disqualifications for benefits". Headnote in Benefit Series. (In Seifing's Petition p. 10.)

8. Tennessee—Benefit Series
Vol. 10, No. 7, p. 109
January 24, 1947
Code: 47-BR-9
Union rigger rejected referral to non-union job. "He says if he had kept it he would have had to pay his union a fine of $100, so rather than keep the job he resigned". (Not cited in Seifing's Petition).

Denying Compensation
(Continued)

9.(a) Utah—Benefit Series
Vol. 8, No. 1, p. 137
May 22, 1944
Code: 44-A-236
"We are confronted here mainly with the personal attitudes or feelings of the individual towards acquiring non-union work and with possible disciplinary action on the part of the union". (In Seifing's Petition p. 10).

9.(b) Utah—Not in Benefit Series
July 19, 1949
Code: 44-C-66
(Mimeographed copy furnished by Department of Employment Security in Sept. 17, 1946). Carpenter declined referral because the job was non-union, and there was "possible action by his union in assessing a fine and suspension, along with attendant loss of certain rights as a union member. All this, however, is based on violation of

Denying Compensation
(Continued)

union rules, and is not attributable to any requirements of the job as set up by the employer." (Not in Seifing's Petition).

10. Virginia — Benefit Series
Vol. 10, No. 5, p. 144
July 12, 1946
Code: D-1541: MS-678
A union painter "states that the only kind of job he would take is a union job, because he was not permitted by the union to take a non-union job."

11.(a) Washington—Benefit Series
Vol. 8, No. 9, p. 204
May 14, 1945
Code: A-4281
"It is certainly appellant's privilege as an individual and a member of a certain union to refuse to consider referrals to prospective jobs for which he is otherwise suited if such jobs are not under the jurisdiction of his preferred union or

Denying Compensation
(Continued)

are under no union at all. However, as a claimant for an award of benefits under the Unemployment Compensation Act, he may not, without disqualification under section 5 (e) refuse referrals to such statutory suitable work whether the work is under the jurisdiction of a union other than his own or under no union at all. To hold otherwise would be to establish the principle that a claimant who is a non-union member is exempt from a disqualification for refusal to apply for work outside the jurisdiction of his union, while a claimant with no union affiliation would be disqualified for refusal to apply for the same work."

11(b). Washington—Benefit Series
Vol. 9, No. 7, p. 126
December 7, 1945
Code: A-4833

Denying Compensation
(Continued)

"The fact that appellant might have been subject to fine by his union for accepting the work does not render it unsuitable, for it was not a condition imposed by the prospective employer that she be a member of any labor organization." (Not in Seifing's Petition).

12. West Virginia — Benefit Series
Vol. 7, No. 12, p. 154
December 8, 1943
Code: 785
"Claimant refused this second referral on the grounds that he belonged to a union and that the work offered was on an open-shop basis, although it paid the union wages . . ."
"The second point is that the claimant himself raised the question as to the work offered. . . . It is not in evidence that any question was raised by the employer." (Not in Seifing's Petition).

The Benefit Series of monthly reports from which we have quoted is of considerable value in the development of harmonious interpretations of the various state unemployment compensation laws.

An illustration is the *Arkansas* decision, Code: 43-AT-182, reported in Benefit Series Vol. 7, No. 6, p. 13, decided on December 30, 1943, which cited and relied upon a Pennsylvania Unemployment Compensation decision. The headnote reads:

> A carpenter who refused work in another trade because he would have been required to resign from his union and join another with which the employer had a closed shop agreement, held to have refused suitable work without good cause when expulsion from his union was not the employer's requirement, and when the union he would have been required to join was not a company union but a bona fide labor organization.

The Arkansas appeals referee commented:

> The Pennsylvania Board of Review in 8067-Pa. R, Benefit Series Vol. 6, No. 7, p. 101 (Aug. 19, 1942), asked the question: 'Is the threat of expulsion of an employee by his own union because of the acceptance of certain work the equivalent of the employer's requirement that he resign from his union. . . .'
>
> Where all of those conditions have been met, and the employment under consideration is not found objectionable under any of them, the fact that the employee's union would expel him . . . were he to accept a proffered job, does not constitute a qualifying justification for . . . refusal of work.

Arkansas here follows the widely recognized 'Pennsylvania rule' (which was first disregarded in Pennsylvania in the Steinberg case, decided on Nov. 30, 1944, by the Pennsylvania Unemployment Compensation Board of Review, which decision is reported in full in the record of the instant case R. 49).

In the event that the present decision of the Supreme Court of Pennsylvania handed down on January 6, 1947,

and reported in full in Benefit Series, Vol. 10, No. 6, p. 139, published in June 1947, following similar decisions in the *Chambers case* by the Supreme Court of Ohio and subsequently followed in the *Bigger case* by the Supreme Court of Delaware, remain as authorities in the respective states, it seems probable that Arkansas will again follow the example set.

(e) Prototype of State Unemployment Compensation Acts in English National Insurance Act of 1911; Interpreted in British Umpire Decisions

The Supreme Court of Nebraska in *Magner v. Kenny*, 141 Neb. 122, 2 N. W. (2d) 689 (March 6, 1942), and the Michigan Supreme Court in *Lawrence Baking Co. v. Unemployment Compensation Commission*, 308 Mich. 198, 13 N. W. (2d) 260 (Feb. 24, 1944), have invited attention to the English origin of the standard pattern of state unemployment compensation laws in this country, namely, Act of 1 and 2 George V, Chap. 55 (1911) (in Chitty's Annual Statutes, Vol. 17, page 185). Amendments have frequently been made thereto, and the law was redrafted in 1935, 25 Geo. V. Chap. 8, Chitty, Vol. 29, Part II, page 757. Here we find the prototype of the clauses placed in the Pennsylvania Act of 1936. Sec. 27 (p. 776) of the English Act of 1935 reads:

> An insured contributor who loses his employment through his misconduct or who voluntarily leaves his employment without just cause shall be disqualified for receiving benefit, etc.

And Section 28 (p. 776):

> If on a claim for benefit it is proved by an officer of the Ministry of Labor—
>
> (a) that the claimant, after a situation in any employment which is suitable in his case has been notified to him by an employment exchange or other recog-

> nized agency, or by or on behalf of an employer, as vacant, or about to become vacant, has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him . . . shall be disqualified, etc.

The English Unemployment Insurance Compensation statutes have been interpreted by a series of "Umpires' decisions". These have been summarized by the editors of Halsbury's Laws of England, Second Edition (1940). Here we read (Vol. 34, page 526):

> Par. 611 . . . If employment or the conditions of employment are in themselves suitable a claimant has not just cause for leaving merely because he is required or requested to do so by his trade union, etc.

A footnote to this text reads:

> If an association insist that the members shall only work for particular employers, or employers who belong to a particular association, they must be prepared to take upon themselves the charge of their members for whom there is available employment, etc. (Umpire's Decision 4747).

His Majesty's Stationery Office has published a pamphlet, on file in Library of the Social Security Administration at Fourth and Independence Ave., S. W., Washington, D. C., entitled "ANALYTICAL GUIDE TO DECISIONS BY THE UMPIRE RESPECTNG CLAIMS FOR BENEFITS." (London 1938; VI Code 7 Part II June 1938).

This pamphlet includes a summary of relevant Umpires' Decisions:

> VI—Attitude of Trade-Unionists to Non-Union Shops and Workmen.
>
> 348. Many cases have arisen when trade unionists have refused or having been impeded by their Trade Unions from accepting employment with non-

associated employers, or have refused to work side by side with Non-Union workmen or have refused employment because forbidden by the Union rules to accept work with a firm employing non-union workmen (414/1926). Benefits must be disallowed when claimants, even on the instructions of their Union, refuse to accept employment with a non-federated employer. If the Association insist that their members shall only work for particular employer or employers who belong to a particular Association, they must be prepared to take upon themselves the charge of their members for whom there is available employment with other firms who pay the recognized conditions of employment (4747, 4268, 4276).

Another illustration from this pamphlet is:

BU-408

Case No. 7681 (31/5/1924). The Association stated that the applicant, who was a riveter, was bound by their rules to leave the employment because he was working with a non-union holder up . . . Rather than work with the non-unionist, he gave up his job. He stated that had he continued in the employment he would have been liable to a fine of two pounds, which was imposed by his Association in such cases.

Recommended by the Court of Referees that the claim should be disallowed for 6 weeks on the ground that the applicant was not justified in leaving his employment . . .

Decision: "On the facts before me my decision is that if the above named employed person had made a claim for unemployment benefits the claim would have been disallowed.

I agree with the Court of Referees. The applicant preferred leaving his employment to continuing to work with a non-unionist, and I cannot regard this as a just cause for leaving.

This series of British Umpire Decisions in like manner repeatedly states the effect of refusal by a member of an English Trade Union, of a referral on the ground that he would be working with non-unionists contrary to the demands or wishes of the Union.

It seems a fair conclusion that the unemployment compensation laws of the several states rest upon English experience and upon acts of Parliament running back to 1911, and that the Umpire Decisions would be proper precedents in arriving at the meaning of the Unemployment Compensation laws of this country.

It is submitted that the origin of the Pennsylvania Unemployment Compensation law is found not so much in the Social Security Act as in the English National Insurance Act of 1911 and its amendments. Congress in using legislative words and phrases which had established meanings on the other side of the Atlantic must have contemplated that the English prototype, with its gloss of official Umpires' Decisions, was a proper yardstick for measuring and interpreting federal and state laws and unemployment compensation laws, and that state courts would, from time to time, be called upon to construe according to their best judicial judgment, the unemployment compensation laws as enacted or amended by the legislature of such state.

(f) Conclusion

It is respectfully submitted that for the reasons above set forth, the Petition of John Seifing for a writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania, may properly be refused by your Honorable Court.

ALBERT SMITH FAUGHT,
Attorney for Barclay White Co.

EDWARD PAUL SMITH,
Attorney for General Building Contractors Association

September 5, 1947